



Commonwealth  
of Massachusetts

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*Office of Campaign and Political Finance  
One Ashburton Place, Room 411  
Boston, MA 02108*

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### Advisory Opinion

May 16, 2002  
AO-02-24

Joseph F. Wagner, Chairman  
Committee on Election Laws  
State House – Room 26  
Boston, MA 02133

Re: Clean Elections Law – Decertification

Dear Representative Wagner:

This letter is in response to your request for an opinion regarding the Clean Elections Law, M.G.L. c. 55A.

You have asked two questions relating to the Clean Elections Law. You have asked if this office would decertify a clean elections statewide party candidate who fails to receive the required level of delegate support at his party's convention for nomination purposes. You have also asked, assuming such a candidate is decertified, if the candidate would be required to return, with interest, all clean election funds that the candidate previously received.

Question 1: Would this office decertify a clean elections statewide party candidate who fails to receive the required level of delegate support for nomination purposes?

Response: Yes. The Clean Election Law provides that a participant in the Clean Elections program must be decertified if the candidate “fails to meet the nominating requirements set forth in chapter 53, including but not limited to a candidate who has lost the party primary, and who has exhausted all legal rights.” M.G.L. c. 55A, § 16(b).

Chapter 53 does not contain a requirement that statewide party candidates must obtain a certain level of delegate support to appear on the primary election ballot. The political parties have adopted rules, however, that establish such limits. Such rules “augment” Chapter 53's nomination requirements. See Langone v. Secretary of the Commonwealth, 388 Mass. 185 (1983), appeal dismissed, 460 U.S. 1057 (1983). In Langone, the Supreme Judicial Court construed Chapter 53 to allow the Massachusetts Democratic party to limit access to the primary election ballot to statewide candidates enrolled in the party to those candidates who received at least fifteen percent of the vote

cast for that office at the party's State convention. In reaching this decision, the court stated that "[f]or the purpose of evaluating the plaintiffs' claims that the 15% rule violates rights guaranteed to them by the Federal and State Constitutions, *we treat the rule as though it were expressly contained in G.L. c. 53.*" 388 Mass. at 195 (emphasis added). Similarly, an enrolled candidate who has not met the candidate's party's threshold should be considered to have not complied with the nominating requirements of chapter 53.

A candidate who has been notified of the office's intent to decertify may request a hearing to contest such decertification. See 970 CMR 5.17(3).

Question 2: Assuming such a candidate is decertified, would the candidate be required to return, with interest, all clean election funds that the candidate previously received?

Response: Yes, but the candidate may apply for a waiver.

The Clean Elections Law states that "[a]ny participant decertified pursuant to this chapter, except a candidate who is decertified solely for not winning the party primary who shall return all unexpended clean primary funds in accordance with section 8(b), shall forfeit and return, with interest from the date of receipt to the date of return . . . all clean election funds which the candidate has received." See also 970 CMR 5.17(1) and (2).

In accordance with regulations issued by this office, a candidate who has been decertified may submit a request for a waiver of part or all of the amount required to be paid or refunded to the Commonwealth. See 970 CMR 5.19.

This opinion is issued within the context of the campaign finance law and the Clean Elections Law and is provided solely on the basis of representations in your letter. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan  
Director

MJS/gb